

The respondents on March 12, 1979 filed a notice of motion for payment out of the sum of \$218,817.50 expended by them pursuant to the order of court of March 17, 1978. The appellants on March 22, 1979 filed a notice of motion seeking to delete the directions for payment out to the respondents contained in the order of March 17, 1978 or for a declaration that the said directions do not apply to the appellants. These two motions were heard before Sinnathuray J. who made an order in terms of the respondents' motion and dismissed the appellants' motion. The appellants now appeal.

It is common ground that the owners of the vessel are insolvent. It is common ground that the general order of priorities as developed by the authorities and settled admiralty practice are now well established. The question is whether the order of priorities as so established are now immutable or whether a court, under its inherent jurisdiction, depending on the facts, can alter the order of priorities in any particular case. It is common ground that in general a claimant for damage caused by the ship has priority over a claim for wages. The authority for this is the case of the "*Linda Flor*".⁽⁷⁾ The judgment of Dr. Lushington reads as follows:—

"The facts in this case, so far as they relate to the question at issue, are the same as the facts in the case of the '*Chimaera*'; and I was then of opinion that the mariners could not maintain their claim to the prejudice of the parties who had obtained a decree in the cause of damage. As the same point has been again mooted, the question for my consideration is, whether I see sufficient cause to depart from that judgment. I adhere to my opinion as expressed in the case of the '*Chimaera*', and I do so especially for the following reasons: that the mariner, besides a lien on the ship for his wages, has also a right of suing the owner personally; that in the case of a foreign ship doing damage and proceeded against in a foreign country, the injured party has no means of obtaining redress save by proceeding against the ship herself, which I apprehend is one of the most cogent reasons for all our proceedings in rem; that, in a case where the proceeds of a ship are insufficient to compensate for the damage done, to allow the mariners to take precedence of those who have suffered damage would be to exonerate so far the owners, to whom the damage is imputed, at the expense of the injured party — the wrong-doer at the expense of him to whom wrong has been done. For, as to the mariner, what is the hardship to which he is exposed? It is true he fails in his remedy against the ship, but his right to sue the owner remains unaffected. These reasons satisfy my mind as to what my decision ought to be, and they constitute the grounds of that decision; it is, however, not to be forgotten that in all these cases of damage, or nearly all, the cause of the damage is the misconduct of some of the persons composing the crew. This is not the case of a bankrupt owner; it will be time to consider such a case when it arises."

Dr. Lushington's decision was approved by the Court of Appeal in "*The Elin*"⁽⁸⁾ where Brett M.R. in his judgment said:

"If the Admiralty Court allowed seamen to recover wages out of this fund it would in so doing give a relief to the owner of the wrong-doing ship in the hands of the court. Dr. Lushington, in exercising the wide equitable maritime jurisdiction of the Admiralty Court, came to the conclusion that it would be unjust to the owner of the injured ship if he allowed the fund against which the lien for damage has priority to be diminished by a payment of wages. This he did quite independently of any mere questions of priority. He did it on the principle of acting justly to the owner of the injured ship."

However, it appears from these two decisions that a court, in the exercise of its Admiralty jurisdiction, is entitled, in spite of the general order of priorities,

A to have regard to the equities in any particular case before it. In the present case it is conceded that the owners of the vessel are insolvent. The crew were all foreign and the Sheriff could not carry out the commission for appraisal and sale without first making arrangements for the crew to leave the vessel and for their repatriation. The claim of the appellants for damage to an installation in Poland was not known to the Sheriff, the mortgagees, the owners of the vessel or the court when the court made the order of March 17, 1978. The respondents as mortgagees were under no obligation to make funds available to the Sheriff to carry out the commission for appraisal and sale. They made full disclosure of all the facts within their knowledge. They were entitled to protect their property and did not make the payment as a volunteer but after consultation with the Sheriff and pursuant to an order of the court. The appellants, on the other hand, merely relied on the established order of priorities and that they would be seriously prejudiced by the order of court. They have not indicated in their affidavit when they suffered the damage to the installation in Poland. They merely denied that they have been sluggish or deliberately lying low with a view to inducing someone else to expending money to his detriment.

We agree with the conclusion arrived at by Sinnathuray J. that on the facts before him it would be an injustice if the respondents are now deprived of the payment they made, acting on the order of court of March 17, 1978. In the result the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Lee & Lee.*

JAMSHID BIN AJMAIN v. THE PORT OF SINGAPORE AUTHORITY

[O.C.J. (D'Cotta J.) September 26, 1979]

[Singapore — Civil Suit No. 71 of 1979]

G *Employment — Port of Singapore Authority constable — Suspension from duty as result of charge under section 384 of Penal Code (Cap. 103) — Acquittal on said charge — Whether plaintiff entitled to salary during period of suspension — Auxiliary Police Regulations 1961, regs. 6(1) & 8.*

H The plaintiff in this case claimed against the defendants for arrears of salary due to him under a contract of employment with the defendants. The plaintiffs joined the defendants' Auxiliary Force as a recruit on October 1, 1969 and was confirmed in the rank of constable on April 1, 1970. On July 13, 1974, he was suspended from duty as a result of a charge against him under the provisions of section 384 of the Penal Code (Cap. 103). The plaintiff was subsequently acquitted at an inquiry held under regulation 6(c) of the Auxiliary Police Regulations, 1961.

I From October 1, 1975, the plaintiff's solicitors had been in communication with the Attorney-General's Chambers, the Commissioner of Police and the defendants in an attempt to ascertain the plaintiff's position and whether or not he would be re-instated by virtue of the fact that he was acquitted at the disciplinary inquiry. Nothing was heard from them and on June 17, 1976, the plaintiff's solicitors wrote to the defendants enquiring whether or not the plaintiff was still a member of the Port of Singapore Authority Police Force. The defendants replied, "whether or not your client is still a member of the P.S.A. Police Force is a question of law to be ascertained in all the circumstances of this case".

Held: (1) nowhere in the said Regulations does it give the defendants power to withhold salary in the event of suspension;

(2) the effect of suspension when exercised operates to suspend the obligations of the parties for the duration of the period of suspension. This includes the employer's obligation to pay wages but if the employee is dismissed at the end of the period of suspension, the employer must pay the employee for that period unless there is provision to the contrary;

(3) the plaintiff's services were never terminated by the defendants as their records show and that he was still in their employ up to the end of March 1979. He was therefore entitled to his salary from the date of his suspension i.e. July 1974 up to and including March 31, 1979.

Case referred to:-

(1) *Waburton v. Taff Vale Railway Co.* (1902) 18 T.L.R. 420.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiff.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

D'Cotta J.: The plaintiff's claim is for arrears of salary due to him under a contract of employment with the defendants.

The facts of the case are briefly as follows:—

The plaintiff, Jamshid bin Ajmain, joined the defendants Auxiliary Force created under the provisions of section 108 of the Port of Singapore Authority Act (Cap. 173) as a recruit on October 1, 1969 and was confirmed in the rank of constable on April 1, 1970: Agreement (AB1) refers. On July 13, 1974 the plaintiff was suspended from duty as a result of a charge against him under the provisions of section 384 of the Penal Code (Cap. 103) — AB2 is the charge and AB3 is the letter of suspension.

The case came up for hearing before the Magistrate on April 14, 1975 when the plaintiff was discharged but such discharge did not amount to an acquittal — AB4. Subsequently he was served with a Defaulter Report on June 30, 1975 — AB5 — and in pursuance of this an inquiry was held under the provisions of Regulation 6(c) of the Auxiliary Police Regulations 1961 (hereinafter called "the said Regulations"). The plaintiff was acquitted.

From October 1, 1975, the solicitors for the plaintiff have been in communication with the Attorney-General's Chambers, the Commissioner of Police and the defendants in an attempt to ascertain the plaintiff's position and whether or not he would be reinstated by virtue of the fact that he was acquitted at the disciplinary inquiry.

Nothing was heard from them and on June 17, 1976 the solicitors for the plaintiff wrote to the defendants enquiring whether or not the plaintiff was still a member of the P.S.A. Police Force. They replied on August 30, 1977 and I quote herewith paragraph 2 of their letter which is very relevant:—

"Whether or not your client is still a member of the P.S.A. Police Force is a question of law to be ascertained in all the circumstances of this case."

Even at this late stage, the defendants were unable to clarify the plaintiff's position and as a result in October

A 1978 the plaintiff instituted the present proceedings.

According to the statement of claim, the plaintiff is claiming salary due to him from July 1974 up to December 1978 amounting to \$33,199 and thereafter salary from month to month in accordance with the contract of employment.

B Now the plaintiff's employment is governed by the terms of the said contract in AB1 and by the provisions of the said Regulations. According to AB1 the plaintiff if desirous of leaving his employment, must give one month's notice to the defendants; similarly it must follow that if the defendants are desirous of terminating the plaintiff's services, they must give him one month's notice.

C It is pertinent to note that the plaintiff's services were never terminated by the defendants. It will be observed that Regulation 8 of the said Regulations reads as follows:—

"If the Commissioner or a commanding officer deems it necessary in the public interest that an auxiliary police officer should cease to exercise the powers and functions of a police officer instantly, he may suspend such auxiliary police officer, pending any enquiry into his conduct under the provisions of these Regulations."

The above gives the defendants the power to suspend an officer from duty pending an enquiry into his conduct. Regulation 6 of the said Regulations gives the defendants power to dismiss the officer. Nowhere in the said Regulations does it give the defendants power to withhold salary in the event of suspension. The effect of suspension when exercised operates to suspend the obligations of the parties for the duration of the period of suspension. This includes the employer's obligation to pay wages but if the employee is dismissed at the end of the period of suspension, the employer must pay the employee for that period unless there is provision to the contrary — see *Friedman's Modern Law of Employment* at page 373.

Again in *Warburton v. Taff Vale Railway Company*,⁽¹⁾ the defendants according to their rules reserved the right to dismiss or suspend from duty any of their servants. They suspended one of their servants for 2 weeks under this rule and at the expiration of the 2 weeks they dismissed him. It was held that he was entitled to his wages during the 2 weeks. Lord Chief Justice Alverstone in his judgment said that in his view the plaintiff was in the company's service during the suspension and when he was dismissed there was no rule empowering them to withhold his wages. Similarly in the instant case, the said Regulations give the defendants power to suspend an employee pending enquiry into his conduct but there is no power whatever to withhold his salary during the period of suspension or on dismissal.

I In evidence, the Commanding Officer of the Port of Singapore Authority Police Force, Mr. Tan Teck Eng (PW1) said that according to his records which is a monthly return sheet showing the duty of all police officers, the plaintiff was shown as having been "suspended" from January to December 1978: the records for 1979 show that the plaintiff had been under "suspension" up to March 1979 but his name is not shown in the April 1979 return because according to PW1

one of his subordinate officers told him that the plaintiff was no longer in the employ of the P.S.A. This monthly return list is prepared with the approval of PW1 and is meant for the general information of all members. In detail, it shows the complement of the force, the officers suspended and the respective duties of the various officers.

Under cross-examination, PW1 was asked why the plaintiff's name was not deleted from this duty list. He replied that he was not aware and when further asked as to why he did not query the plaintiff's suspension his reply was that it had slipped his notice. From the evidence, there is no doubt that the defendants did not terminate the employment of the plaintiff and that his name appeared in their records up to March 1979 as being "suspended": In other words, the plaintiff had been under suspension from July 1974 to March 1979.

The defendants elected not to give any evidence.

Now the plaintiff in this case was acquitted after the disciplinary proceedings in July 1975. He was never informed by the defendants whether or not he would be reinstated or whether they were going to dismiss him. Again through his solicitors enquiries were made as to his position and for almost two years a satisfactory reply could not be obtained from the defendants. Even as late as August 1977 the solicitors for the defendants were not in a position to state whether the plaintiff was still in the employ of the defendants or not — AB26. The plaintiff even approached two Members of Parliament for their assistance but they appeared reluctant to intervene although one of them did suggest to him that he should resign. Despite his acquittal the plaintiff's name still remained in the defendants records as having been under suspension; his suspension was never removed and it was only in April 1979 that PW1 was informed that the plaintiff was no longer in their employ and only then was the plaintiff's name removed from the records; his services were never terminated.

In my view, owing to the fact that the plaintiff's services were never terminated by the defendants as their own records show and that he was still in their employ up to the end of March 1979, he is entitled to his salary from the date of his suspension i.e. July 1974 up to and including March 31, 1979. There will accordingly be judgment for the plaintiff for the sum of \$35,419 and costs.

Claim allowed.

Solicitors: J.B. Jeyaretnam & Co.; Rodyk & Davidson.

A

V.S.T. LETCHME v. K.N.V. GOPAL

[A.C.J. (Rajah J.) November 9, 1979]

[Singapore — District Court Appeal No. 56 of 1979]

Family Law — Divorce — Whether husband still liable to pay wife maintenance after dissolution of marriage — Women's Charter (Cap. 47), ss. 60 & 62(1).

B

Women's Charter — Scope of s. 62(1) of Women's Charter (Cap. 47).

On November 20, 1976 the appellant in this case filed a petition for divorce against her husband on the ground of his adultery. There was no prayer in the petition for maintenance. On December 28, 1976 she started maintenance proceedings under section 60 of the Women's Charter against her husband. On March 7, 1977 there was a consent order that the husband pay her monthly as from March 1, 1977 through the Registrar of the Subordinate Courts, the sum of \$80 for her maintenance.

C

The appellant's petition was heard on June 27, 1977. The Decree Nisi in her favour was made absolute on October 7, 1977. The Maintenance Order was not brought to the attention of the Judge. In the meantime the husband had been paying \$80 per month. He stopped payment as from October 1978 and started proceedings on March 15, 1979 under section 62(1) of the Women's Charter. He applied for a rescission of the Maintenance Order since his marriage to the appellant had been dissolved.

D

The wife appealed.

Held, allowing the appeal: where the husband is the erring party and the wife the innocent one, the law is clear and explicit that there is a liability on the part of the husband to maintain his wife whether before or after divorce.

E

Cases referred to:-

- (1) *Plunkett v. Plunkett* [1937] 3 All E.R. 736.
- (2) *Wood v. Wood* [1957] 2 All E.R. 14.
- (3) *Bragg v. Bragg* [1925] P. 20.

DISTRICT COURT APPEAL.

F

Tan Chin Siong for the appellant.

Tan Sri Syed Esa Almenoar for the respondent.

Cur. Adv. Vult.

G

Rajah J.: The respondent (husband) and the appellant (wife) were married on March 21, 1970. Sometime in January 1972 she discovered that her husband was cohabiting with another woman and had a child by her, and in consequence she left the matrimonial home on January 20, 1972.

H

On November 20, 1976 the Legal Aid Bureau filed a petition on her behalf for the dissolution of her marriage on the ground of her husband's adultery. There was no prayer in the petition for maintenance. The petition stated that there had been no previous proceedings in any court with reference to her marriage either by herself or her husband. However, on December 28, 1976 she started maintenance proceedings under section 60 of the Women's Charter (Cap. 47 of 1970 Revised Edition) against her husband in the Magistrates' Court and on March 7, 1977 there was a consent order that the husband pay her monthly as from March 1, 1977, through the Registrar of the Subordinate Courts, the sum of \$80 for her maintenance.

I

Her petition for dissolution of marriage, which was uncontested, was heard on June 27, 1977 when a decree nisi to be made absolute in 3 months was pronounced in her favour. The maintenance order ob-